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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,496	09/15/2003	Anthony J. Baerlocher	0112300-1541	9205
29159	7590	08/03/2005	EXAMINER	
BELL, BOYD & LLOYD LLC			SKAARUP, JASON M	
P. O. BOX 1135			ART UNIT	
CHICAGO, IL 60690-1135			PAPER NUMBER	

3714

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/662,496

Applicant(s)

BAERLOCHER, ANTHONY J.

Examiner

Jason Skaarup

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2003 and 12 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 38-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/12/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The Examiner considered the Information Disclosure Statement (IDS) submitted on January 12, 2004.

### ***Claim Objections***

2. Claims 19, 31 and 38-40 are objected to because of the following informalities:

Claim 19 recites the limitation "said non-eliminator selection is picked" in lines 6-7 thereof. In lines 2-3, claim 19 recites "at least three non-eliminator selections". It is unclear which of the at least three non-eliminator selections is picked in order to accumulate the advancement recited in lines 5-7 of claim 19. The Examiner suggests the limitation "one of said non-eliminator selections is picked" as one suitable replacement for the limitation of lines 6-7 identified above. Appropriate correction is required.

Claim 31 recites the limitation "said game" in line 2 thereof. The limitation appears to be a typographical error, as the Examiner believes Applicant intended for the limitation to recite "said gaming device". Appropriate correction is required.

Claims 38-40 are new claims that were added in Applicant's Preliminary Amendment filed April 12, 2004. Applicant's Preliminary Amendment indicated that new claims 31-40 were added. However, only new claims 31-33 and 38-40 were present in the Preliminary Amendment. Since Applicant paid for 40 total claims, it appears that Applicant intended to submit new claims 34-37 (which were missing from the

Preliminary Amendment) in addition to submitting new claims 31-33 and 38-40 (which were included in the Preliminary Amendment). Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "least desirable outcome" in line 2 thereof. The term "least desirable" in claim 7 is a relative term, which renders the claim indefinite. The term "least desirable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "outcome" of claim 7 has been rendered indefinite by the use of the relative term "least desirable".

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 21-33 and 39-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Kamille (U.S. Patent No. 5,996,997).

Kamille discloses a method of operating a gaming device having a game upon a wager as recited in claim 21 (Figures 3, 7A and 7C along with the related description thereof). The disclosed method comprises:

displaying a plurality of selections (selections 301, 302, 303, 304, 305 and 306 of Figure 3 and selections 701 of Figures 7A and 7C);

enabling a player to pick one of the selections (Figures 3, 7A and 7C along with the related description thereof);

if the player picks an eliminator selection (selection 303 of Figure 3 or “double-ended arrow” 701 of Figure 7A), eliminating at least one of the other selections from being subsequently picked (selection 306 of Figure 3 or “multi-directional arrow” adjacent to the “double-ended arrow” 701 of Figure 7A) and enabling the player to pick at least one of the remaining selections (selections 301, 302, 304 and 305 of Figure 3 and “void” or “left-facing arrow” adjacent to the “double-ended arrow” 701 of Figure 7A).

Regarding claim 22, Kamille discloses that the combination of Kamille and Thomas et al. teaches that the outcome includes a plurality of awards, wherein one of the awards are associated with each of the other selections (Figure 3 of Kamille along with the related description thereof, wherein at least selections 301, 302 and 306 are each associated with an award).

Regarding claim 23, Kamille discloses a bonus round, wherein the bonus game is one of a plurality of bonus games and wherein the outcomes associated with the selections include advances accumulated in the bonus round (Figure 3 of Kamille along with the related description thereof and col. 5, lines 57-60, wherein each selection constitutes a bonus game as the player can stop play after each selection, wherein successive selections constitute a plurality of bonus games comprising a bonus round and wherein advances in the form of "voids" can be accumulated in each bonus game to end the bonus round as described in col. 5, lines 57-60).

Regarding claim 24, Kamille discloses that the eliminated selection (selection 306) includes the lowest one of the awards (Figure 3 of Kamille along with the related description thereof, wherein selection 306 includes the lowest award of zero).

Regarding claims 25 and 26, the combination of Kamille and Thomas et al. teaches providing the game to a player through a data network, wherein the data network is an internet (col. 5, lines 30-47 of Kamille).

Kamille discloses a method of operating a gaming device having a game upon a wager as recited in claim 27 (Figures 3, 7A and 7C along with the related description thereof). The disclosed method comprises:

displaying a plurality of selections (selections 301, 302, 303, 304, 305 and 306 of Figure 3 and selections 701 of Figures 7A and 7C);

enabling a player to pick one of the selections (Figures 3, 7A and 7C along with the related description thereof);

if the player picks an eliminator selection (selection 303 of Figure 3 or "double-ended arrow" 701 of Figure 7A), eliminating at least one of the other selections (selection 306 of Figure 3 or "multi-directional arrow" adjacent to the "double-ended arrow" 701 of Figure 7A) and enabling the player to pick from the remaining selections (selections 301, 302, 304 and 305 of Figure 3 and "void" or "left-facing arrow" adjacent to the "double-ended arrow" 701 of Figure 7A); and

providing to the player an advance ("void" of Figure 7A) associated with at least one of the remaining selections picked by the player (Figure 7A, "void" or "left-facing arrow" adjacent to the "double-ended arrow" 701 of Figure 7A are remaining selections picked by the player), wherein an award is adapted to be provided to the player based on an accumulated number of advances (col. 5, lines 57-60, wherein each "void" is accumulated and a number of "voids" may be accumulated before the player is awarded with a "loss" or "end game" having zero value).

Regarding claim 28, Kamille discloses that the eliminated selection (selection 306 or "void") includes the lowest one of the awards (Figure 3 of Kamille along with the related description thereof, wherein selection 306 includes a "void" having the lowest award of zero). By eliminating the lowest award with eliminators or directionals 303, Kamille varies the odds of the game for better game control (col. 8, lines 10-18 and col.

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10, lines 1-5). Each selection 306, or “void”, is accumulated and a number of “voids” may be accumulated before the player is awarded with a “loss” or “end game” (col. 5, lines 57-60). Since each “void” counts as the same amount (one advance) and is accumulated as such, the eliminated selection (“void” selection 306) has the lowest number of advances, as all the “voids” count as one advance.

Regarding claims 29 and 30, Kamille discloses providing the game to a player through a data network, wherein the data network is an internet (col. 5; lines 30-47).

Kamille discloses a gaming device operated under the control of a processor as recited in claim 31 (Figures 3, 7A and 7C along with the related description thereof).

The disclosed gaming device comprises:

- a display controlled by the processor (col. 5, lines 30-47);

- a game displayed by the display device (Figures 3, 7A and 7C along with the related description thereof);

- a plurality of selections (selections 301, 302, 303, 304, 305 and 306 of Figure 3 and selections 701 of Figures 7A and 7C) in the game, wherein the selections include at least one eliminator selection (selection 303 of Figure 3 or “double-ended arrow” 701 of Figure 7A) and at least three other selections (selection 306 of Figure 3 or “multi-directional arrow” adjacent to the “double-ended arrow” 701 of Figure 7A), wherein if the eliminator selection (selection 303 of Figure 3 or “double-ended arrow” 701 of Figure 7A) is picked in a play of the game, wherein at least one of the other selections (selection 306 of Figure 3 or “multi-directional arrow” adjacent to the “double-ended arrow” 701 of Figure 7A) is eliminated from further selection in the player of the game



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and wherein at least one of the other selections is available to be subsequently picked in the play of the game (selections 301, 302, 304 and 305 of Figure 3 and “void” or “left-facing arrow” adjacent to the “double-ended arrow” 701 of Figure 7A are available to be subsequently picked); and

an outcome of the game adapted to be provided to the player based on at least one of the picked other selections (outcomes 301, 302 of Figure 3 and outcomes “void” and “left-facing arrow” adjacent to the “double-ended arrow” 701 of Figure 7A ).

Regarding claim 32, Kamille discloses a plurality of outcomes, wherein one of the outcomes is associated with each of the other selections (Figure 3 of Kamille along with the related description thereof, wherein selections 301, 302, 304, 305 and 306 of Figure 3 and selections 701 of Figure 7A are each associated with an outcome).

Regarding claim 33, Kamille discloses that the outcome includes a plurality of awards, wherein one of the awards are associated with each of the other selections (Figure 3 of Kamille along with the related description thereof, wherein at least selections 301, 302 and 306 are each associated with an award and wherein at least “\$5 win” of Figure 7A is associated with an award).

Regarding claim 39, Kamille discloses that the number of eliminated selections is based on the total number of selections and the number of eliminator selections (Figures 3, 7A and 7C of Kamille along with the related description thereof).

Kamille discloses a method of operating a gaming device having a game upon a wager as recited in claim 40 (Figures 3, 7A and 7C along with the related description thereof). The disclosed method comprises:

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displaying a plurality of selections (selections 301, 302, 303, 304, 305 and 306 of Figure 3 and selections 701 of Figures 7A and 7C);

causing a pick of one of the selections (Figures 3, 7A and 7C along with the related description thereof);

if an eliminator selection is picked (selection 303 of Figure 3 or "double-ended arrow" 701 of Figure 7A), eliminating at least one of the other selections from subsequently being picked (selection 306 of Figure 3 or "multi-directional arrow" adjacent to the "double-ended arrow" 701 of Figure 7A) and causing a pick of at least one of the remaining selections (selections 301, 302, 304 and 305 of Figure 3 and "void" or "left-facing arrow" adjacent to the "double-ended arrow" 701 of Figure 7A); and

providing an outcome to the player based on at least one of the picked selections (outcomes 301, 302 of Figure 3, outcomes "void" and "left-facing arrow" adjacent to the "double-ended arrow" 701 of Figure 7A and outcome "downward facing arrow" with "win 50¢" of Figure 7C).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-20 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamille in view of Thomas et al. (EP 0945837A2).

Regarding independent claims 1 and 12, Kamille teaches a virtual game piece and game method (Figure 3 along with the related description thereof) implemented in a game machine or computer network (col. 5, lines 30-47). The virtual game piece (300) includes a plurality of selections, wherein the selections include one eliminator selection (directional 303) and at least three other selections (selections 301, 302, 304, 305 and 306). When the eliminator selection (directional 303) is picked, one of the other selections (selection 306) is eliminated, and the remaining selections are available to be subsequently picked (selections 301, 302, 304 and 305). The eliminator selection (directional 303) reduces the number of potential selections (selections 301, 302, 304 and 305 are available to be selected by the player as selection 306 is eliminated in Figure 3) to be selected by the player while playing the game (col. 9, line 56 to col. 10, line 6 and col. 10, lines 35-37). An outcome is provided to the player based on at least one of the selections (selections 301, 302, 304, 305 and 306) other than the eliminator selection (directional 303). Specifically, Kamille teaches that a player can choose whether to continue play of the game piece after each selection, provided that the player does not choose a "void" symbol (col. 5, lines 55-60). Kamille teaches that this choice, provided in the virtual game piece, increases player involvement and interest (col. 6, lines 64-67).

As detailed above, Kamille teaches that the virtual game piece (Figure 3 along with the related description thereof) can be implemented in a game machine or

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computer network (col. 5, lines 30-47). However, Kamille does not explicitly teach a display device adapted to display the selections, a base game operable upon a wager or a triggering event associated with the base game that triggers the bonus game upon the occurrence of the triggering event. In a related gaming device and method, Thomas et al. teach a base game operable upon a wager (Figures 8 and 9 along with the related description thereof) that is displayed to a player. A triggering event associated with the base game triggers a bonus game operable upon the occurrence of the triggering event. The bonus game is displayed to the player and includes a plurality of selections selectable by the player until an "end-bonus" game outcome is achieved (paragraphs [0033] to [0037]). Thomas et al. teach that bonus games offer increased player appeal and excitement relative to other known games (paragraph [0005]). It would have been obvious for one skilled in the art at the time of the invention to incorporate the game piece taught by Kamille into the gaming device and method of Thomas et al. as a triggerable bonus game in order to increase player appeal and excitement as desirably taught by Thomas et al. in paragraph [0005] and Kamille in col. 6, lines 64-67.

Regarding claim 2, the combination of Kamille and Thomas et al. teaches a plurality of outcomes, wherein one of the outcomes is associated with each of the other selections (Figure 3 of Kamille along with the related description thereof, wherein selections 301, 302, 304, 305 and 306 are each associated with an outcome).

Regarding claims 3 and 13, the combination of Kamille and Thomas et al. teaches that the outcome includes a plurality of awards, wherein one of the awards are associated with each of the other selections (Figure 3 of Kamille along with the related

description thereof, wherein at least selections 301, 302 and 306 are each associated with an award).

Regarding claims 4 and 14, the combination of Kamille and Thomas et al. teaches that the eliminated selection (selection 306) includes the lowest one of the awards (Figure 3 of Kamille along with the related description thereof, wherein selection 306 includes the lowest award of zero).

Regarding claim 5, the combination of Kamille and Thomas et al. teaches that the other selections include at least four other selections (selections 301, 302, 304 and 305 of Figure 3 in Kamille along with the related description thereof).

Regarding claim 6, the combination of Kamille and Thomas et al. teaches that when the eliminator selection is picked (selection 303 of Figure 3 in Kamille), all but at least two of the remaining selections are eliminated (selection 306 is eliminated leaving all but at least two of selections 301, 302, 304 and 305).

Regarding claim 7, the combination of Kamille and Thomas et al. teaches that the outcomes associated with the eliminated selections include least desirable outcomes (selection 306 of Figure 3 in Kamille along with the related description thereof, wherein selection 306 has zero value and ends the game, which constitutes a least desirable outcome).

Regarding claim 8, the combination of Kamille and Thomas et al. teaches that the selections are player selectable (Figure 3 of Kamille along with the related description thereof) and which includes at least one input device which enables the player to pick the selections (paragraph [0035] of Thomas et al.).

Regarding claims 9 and 15, the combination of Kamille and Thomas et al. teaches that the number of eliminated selections is based on the total number of selections and the number of eliminator selections (Figures 3, 7A and 7C of Kamille along with the related description thereof).

Regarding claims 10, 16, 18 and 20, the combination of Kamille and Thomas et al. teaches a bonus round, wherein the bonus game is one of a plurality of bonus games and wherein the outcomes associated with the selections include advances accumulated in the bonus round (Figure 3 of Kamille along with the related description thereof and col. 5, lines 57-60, wherein each selection constitutes a bonus game as the player can stop play after each selection, wherein successive selections constitute a plurality of bonus games comprising a bonus round and wherein advances in the form of "voids" can be accumulated in each bonus game to end the bonus round as described in col. 5, lines 57-60).

Regarding claims 11 and 17, the combination of Kamille and Thomas et al. teaches a designated award (wherein a "void" has zero value corresponding to the designated award) adapted to be provided to the player if the player accumulates a designated number of advances (a designated number of "voids" corresponds to a designated number of advances) in the bonus round (col. 5, lines 57-60).

Regarding claim 38, Kamille discloses and teaches the gaming device of claim 31 as detailed above. Further, Kamille teaches that the selections are player selectable (Figure 3 of Kamille along with the related description thereof). However, Kamille does not explicitly teach that the gaming device includes at least one input device that

enables the player to pick the selections. In a related gaming device, Thomas et al. teach at least one input device which enables the player to pick selections in a game (paragraph [0035]). Thomas et al. teach that selection of selection elements under player control enhances game excitement (paragraph [0035]). It would have been obvious for one skilled in the art at the time of the invention to incorporate the input device taught by Thomas et al. into the gaming device taught by Kamille in order to enhance game excitement as desirably taught by Thomas et al. in paragraph [0035].

### ***Conclusion***

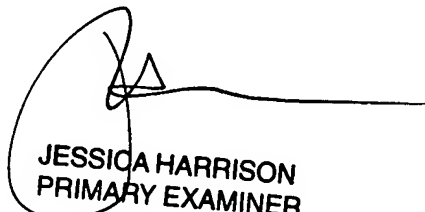
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is listed on the attached Notice of References Cited (PTO-892). Of particular note may be Randall (GB 2,333,880), which discloses a bonus game in which players are enabled to select one or more selections 32 from a plurality of zones 22-26. Selections 32 in a particular zone, e.g., zone 22, can include a key symbol (an "eliminator" symbol), wherein the non-selected selections 32 associated with the particular zone are removed from possible selection as the player is transferred to a different zone, e.g., zone 23. The transfer to zone 23 enables the player to select different selections 32 than were previously available in zone 22 and the previous selections 32 are "eliminated" from further selection. Thus, the key symbol serves as an eliminator as recited in at least claims 1 and 40.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jason Skaarup whose telephone number is 571-272-4455. The Examiner can normally be reached on Monday-Thursday (10:00-8:00).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Jessica Harrison can be reached at 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JESSICA HARRISON  
PRIMARY EXAMINER